

APPEAL NO. 030759  
FILED MAY 15, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 4, 2003. The hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the first quarter.

The appellant (carrier) appeals, contending that the claimant had been "released to at least half day employment during the qualifying period" but that she worked considerably fewer hours and therefore had not shown a good faith effort to seek employment commensurate with her ability to work. The file does not have a response from the claimant.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The carrier appeals the hearing officer's findings in favor of the claimant apparently on the good faith criteria of Section 408.142(a)(4) and Rule 130.102(b)(2). There is no stipulation on the qualifying period, but the parties appear to agree it was from January 18 through April 18, 2002.

The claimant sustained a compensable neck and low back injury on \_\_\_\_\_, and had cervical spine surgery in February 2000. The claimant, at some time, apparently returned to full duty. In evidence is a letter dated April 19, 2001, from the claimant's treating doctor "decreasing [the claimant's] work hours back down to half days." The claimant testified that her condition continued to get worse and although she testified that she was working half days, pay stubs would not support that allegation. The treating doctor eventually took the claimant off work altogether on April 3, 2002 (two weeks prior to the end of the qualifying period), and the claimant had lumbar spinal surgery on September 26, 2002.

Neither party nor the hearing officer reference any applicable portion of the 1989 Act or the Texas Workers' Compensation Commission (Commission) rules. Rule 130.102(b) provides that an injured employee who has an impairment rating of 15% or greater and who has not commuted any impairment income benefits, is eligible to receive SIBs if, during the qualifying period, the employee: (1) has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury; and (2) has made a good faith effort to obtain employment commensurate with the employee's ability to work. The hearing officer determined that the claimant's "impairment from the \_\_\_\_\_, injury was a cause of Claimant's reduced earnings during the qualifying period for the first quarter." We accept that

determination as meaning that the claimant met the direct result eligibility criterion of Rule 130.102(b)(1). We do not view that determination as having been appealed and will not discuss it further.

Rule 130.102(d)(1) provides that a claimant has made a good faith effort to obtain employment commensurate with the claimant's ability to work if the claimant had returned to work "in a position which is relatively equal to the injured employee's ability to work." The hearing officer found that the claimant "had returned to work in a position relatively equal to her ability to work during the qualifying period." The carrier asserts that since the claimant was not working half days as stated in the treating doctor's letter eight months prior to the qualifying period, the claimant did not meet the good faith effort criterion. Whether the claimant returned to work in a position relatively equal to her ability to work is a question of fact for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 011787, decided September 21, 2001, and Texas Workers' Compensation Commission Appeal No. 030298, decided March 10, 2003. Applying the standard of review set out above, we find no basis to overturn the hearing officer's finding that the claimant, in good faith, sought to obtain employment commensurate with her ability to work. The hearing officer could believe the claimant's testimony that she was unable to work the half days prescribed eight months prior to the qualifying period, which is further supported by the fact that the treating doctor took the claimant off work altogether during the last two weeks of the qualifying period preparatory to spinal surgery. In addition, if the claimant complies with Rule 130.102(d)(1) during any portion of the qualifying period, that will satisfy the good faith requirement of Section 408.142(a)(4) and Rule 130.102(b)(2).

The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**TIM KELLY, AIG  
675 BERING, 3RD FLOOR  
HOUSTON, TEXAS 77057.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Margaret L. Turner  
Appeals Judge